

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 29758 of 2007(P)

AGAINST THE ORDER DATED 21/08/2007 IN IA 5039/2007 IN
OS.652/2007 of I ADDL.M.C.,ERNAKULAM
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PETITIONERS:

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1. TRINITY BUILDERS AND DEVELOPERS
(A UNIT OF TRINITY ARCADE (P) LTD.),REPRESENTED BY
ITS MANAGING DIRECTOR, ROY JOSEPH, TRINITY HOUSE,
35/268A, OPP. YATRI NIVAS, MAMAMGALAM, COCHIN-25.
 2. ROY JOSEPH,
MANAGING DIRECTOR, TRINITY HOUSE, 35/268A,
OPP. YATRI NIVAS, MAMAMGALAM, COCHIN-25.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS:

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1. N.T. JOHNSON, S/O. N.J.THOMAS,
NEDUMKALLUNGAL HOUSE, CHITTETHUKARA,KAKKANAD,CESZ.
 2. LILLY JOSEPH, W/O. N.T. JOHNSON,
NEDUMKALLUNGAL HOUSE, CHITTETHUKARA,KAKKANAD,CESZ.
 3. LATHEEF K.A., S/O. K.P. ABDU,
KANNANKERI HOUSE, CHITTETHUKARA,KAKKANAD,CESZ.
 4. NAZAR P.I., S/O. N.U.IBRAHIM,
PAPPAKUDAM HOUSE, CHITTETHUKARA,KAKKANAD,CESZ.
 5. ABDUL SALAM, S/O.MOHAMMED,
CHITTETHUKARA, KAKKANAD.

BY ADV. SRI. SRI. M.C. SEN (Sr.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.29758 OF 2007

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Dated this the 8th day of October 2007

JUDGMENT

This writ petition is filed to set aside Exts.P5, P5(a) and P5(b) orders and to allow Exts.P2 to P4 applications as prayed for by the parties. The suit is one for injunction and it is with respect to the construction of a building. Plaintiffs, 4 in numbers, originally approached the court with a prayer to grant them a permanent prohibitory injunction restraining the defendants and their men in carrying out the piling operations and the construction of multi-storied buildings, which causes destruction to their building and they should be enjoined. A perusal of Exts.P2 and P3 applications would reveal that they want to incorporate another person also, who is affected by the said act as the 5th plaintiff and amend the plaint. Parties have entered into a settlement and they want disposal of the suit in the light of the terms of the compromise as well. The learned Munsiff was of the opinion that for adjudication of the case between plaintiffs 1 to 4 and defendants the junction of the 5th plaintiff is not necessary and therefore dismissed those applications. I feel the court has been very technical,

especially when the parties have compromised the matter. Now by the proposed amendment, the person sought to be impleaded is also a party, who is affected by the action of the defendants in the case.

2. It is true that they should have been more prudent to incorporate him also as a plaintiff in the inception itself so that these technical reasons could have been averted. Defendants in the suit also want a settlement of the matter. Every party found that the junction of the 5th plaintiff as well to amend the plaint and then permit the parties to compromise the case. Under Order 23 of the amended C.P.C., even the matters which are extraneous to the subject matter of the suit can be settled between the parties. But in order to make the things clear and straight when applications are filed the court has to take the entire thing in that back drop and pass orders instead of dismissing the case on a technical ground. No doubt Order 1 Rule 10 enables the court to implead any person as party for a proper disposal of the matter. When a matter is compromised and it comes to the knowledge of the court that another person is also affected, there is nothing wrong in adding him as a party to the proceeding so that there is a final settlement of the dispute between the parties.

Therefore, I feel that the order passed by the learned Munsiff requires interference. I allow the applications and direct the court below to permit

the plaint to be amended, compromise with the junction of the said person also and dispose of the suit in accordance with law. One of the parties may produce a copy of this judgment before the court below for further action.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-